

ESTTA Tracking number: **ESTTA618718**

Filing date: **07/31/2014**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Tristar Products, Inc.
Granted to Date of previous extension	08/06/2014
Address	492 Route 46 East Fairfield, NJ 07004 UNITED STATES
Correspondence information	Cheryl A. Clarkin, Esq. Daniel J. Holmander, Esq. Barlow, Josephs & Holmes Ltd. 101 Dyer Street 5th Floor Providence, RI 02903 UNITED STATES cac@barjos.com Phone:401-273-4446

Applicant Information

Application No	85742504	Publication date	04/08/2014
Opposition Filing Date	07/31/2014	Opposition Period Ends	08/06/2014
Applicant	N.E. Castle 4 Richard Avenue Shrewsbury, MA 01545 UNITED STATES		

Goods/Services Affected by Opposition


<p>Class 025. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Ankle socks; Apparel for dancers, namely, tee shirts, sweatshirts, pants, leggings, shorts and jackets; Athletic apparel, namely, shirts, pants, jackets, footwear, hats and caps, athletic uniforms; Athletic uniforms; Babies' pants; Baby bodysuits; Baby bottoms; Baby doll pyjamas; Baby tops; Bandanas; Baseball caps and hats; Bathing trunks; Bathrobes; Beach coverups; Beach footwear; Beach shoes; Bermuda shorts; Body suits; Bonnets; Booties; Boots; Boxer briefs; Bras; Cap visors; Children's and infant's apparel, namely, jumpers, over-all sleepwear, pajamas, rompers and one-piece garments; Children's and infants' cloth bibs; Children's headwear; Clothing for babies, toddlers and children, treated with fire and heat retardants, namely, pajamas, jackets, shirts, pants, jumpers; Coats; Dance costumes; Dresses; Ear muffs; Fleece bottoms; Fleece pullovers; Fleece shorts; Fleece tops; Fleece vests; Flip flops; Footwear; Halloween costumes and masks sold in connection therewith; Headbands; Headgear, namely, hats, caps, visors and bandanas; Headwear; Hooded pullovers; Hooded sweatshirts; Infant and toddler one piece clothing; Infant wearable blankets; Jackets and socks; Japanese footwear of rice straw (waraji); Japanese split-toed work footwear (jikatabi); Jeans; Jerseys; Jogging pants; Jogging suits; Jumper dresses; Knit shirts; Leg warmers; Long johns; Long underwear; Long-sleeved shirts; Mittens; Nightgowns; Nightshirts; Pajama bottoms; Pajamas; Panties, shorts and briefs; Rain boots; Rain coats;</p>
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Rain hats; Rain jackets; Rain wear; Running suits; Sandals; Shirts; Shirts for infants, babies, toddlers and children; Shoe accessories, namely, fitted decorative covers for shoes; Ski boot bags; Sleepwear; Slipper socks; Slippers; Sneakers; Socks; Sundresses; Surf wear; Sweat bands; Sweatbands; Sweaters; Sweatpants; Sweatshirts; Swim wear; T-shirts; Tee shirts; Thermal underwear; Undergarments; Underwear; Vests; Wraps; Wristbands; Yoga pants; Yoga shirts

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	4467559	Application Date	10/11/2012
Registration Date	01/14/2014	Foreign Priority Date	NONE
Word Mark	GENIE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 2011/02/15 First Use In Commerce: 2011/02/15 Bras; Briefs; Camisoles; Chemises; Hosiery; Ladies' underwear; Leotards; Lingerie; Negligees; Nightgowns; Pajamas; Panties; Peignoirs; Robes; Shapewear, namely, shorts, control briefs, control camisoles and control slips; Shorts; Sleepwear; Slips; Stockings; Teddies; Tights		

U.S. Registration No.	4032799	Application Date	01/03/2011
Registration Date	09/27/2011	Foreign Priority Date	NONE
Word Mark	GENIE BRA		
Design Mark			
Description of Mark	NONE		

Goods/Services	Class 025. First use: First Use: 2011/02/15 First Use In Commerce: 2011/02/15 Bras		
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U.S. Registration No.	4170355	Application Date	05/27/2011
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Registration Date	07/10/2012	Foreign Priority Date	NONE
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Word Mark	GENIE BRA WHAT ALL WOMEN WISH FOR		
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Design Mark			
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Description of Mark	The mark consists of the words "GENIE BRA" in script lettering with a heart design over the "i" in "GENIE" above the words "WHAT ALL WOMEN WISH FOR".		
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Goods/Services	Class 025. First use: First Use: 2011/02/15 First Use In Commerce: 2011/02/15 Bras		
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U.S. Registration No.	4572700	Application Date	04/27/2011
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Registration Date	07/22/2014	Foreign Priority Date	NONE
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Word Mark	GENIE SPORT		
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Design Mark			
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Description of Mark	NONE		
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Goods/Services	Class 025. First use: First Use: 2013/08/20 First Use In Commerce: 2013/08/25 Leggings; Sports bras; Sports pants; Stretch pants; Sweat pants; Sweat shirts; Tops		
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U.S. Application No.	85306200	Application Date	04/27/2011
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Registration Date	NONE	Foreign Priority Date	NONE
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Word Mark	GENIEJEANS		
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Design Mark	<h1>GenieJeans</h1>		
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 0 First Use In Commerce: 0 Jeans; Leggings; Pants; Stretch pants; Sweat pants; Tops		

U.S. Application No.	85306226	Application Date	04/27/2011
Registration Date	NONE	Foreign Priority Date	NONE

Word Mark	GENIEPLUS		
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Design Mark	<h1>GeniePlus</h1>		
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 0 First Use In Commerce: 0 Bras; Foundation garments; Leggings; Sleepwear; Sports bras; Tops; Under garments		

U.S. Application No.	85272359	Application Date	03/21/2011
Registration Date	NONE	Foreign Priority Date	NONE

Word Mark	GENIE WEAR		
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Design Mark	GENIE WEAR
Description of Mark	NONE
Goods/Services	Class 025. First use: First Use: 0 First Use In Commerce: 0 Foundation garments; Lingerie; Women's underwear

Attachments	85751771#TMSN.png(bytes) 85209455#TMSN.png(bytes) 85332168#TMSN.png(bytes) 85306249#TMSN.png(bytes) 85306200#TMSN.png(bytes) 85306226#TMSN.png(bytes) 85272359#TMSN.png(bytes) notice of opposition.pdf(730797 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/cac/
Name	Cheryl A. Clarkin, Esq.
Date	07/31/2014

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Tristar Products, Inc.)	
)	
Opposer,)	Opposition No. _____
)	
v.)	Application Serial No.
)	85/742504
N. E. Castle,)	
)	
Applicant.)	
)	

NOTICE OF OPPOSITION

Opposer, Tristar Products, Inc. a corporation organized under the laws of Pennsylvania and located at 492 Route 46 East, Fairfield, NJ 07004, believes that it will be damaged by registration of LOOGIE THE BOOGER GENIE (“Mark”), which Mark is the subject of U.S. Federal Trademark Application Serial No. 85/742,504 (“Application”) filed by N. E. Castle, an individual, having an address at 4 Richard Avenue, Shrewsbury, Massachusetts 01545 and which Mark was published for opposition in the *Official Gazette* on April 8, 2014. An extension of time was granted by the Trademark Office for Opposer to file an Opposition by August 6, 2014.

The grounds for the opposition are as follows:

Section 2(d) of the Trademark Act –Likelihood of Confusion

1. Applicant seeks to register LOGGIE THE BOOGER GENIE for ankle socks; Apparel for dancers, namely, tee shirts, sweatshirts, pants, leggings, shorts and jackets; Athletic apparel, namely, shirts, pants, jackets, footwear, hats and caps, athletic uniforms; Athletic uniforms; Babies' pants; Baby bodysuits; Baby bottoms; Baby doll pyjamas; Baby tops; Bandanas; Baseball caps and hats; Bathing trunks; Bathrobes; Beach coverups; Beach footwear; Beach shoes; Bermuda shorts; Body suits; Bonnets; Booties; Boots; Boxer briefs; Bras; Cap visors; Children's and infant's apparel, namely, jumpers, overall sleepwear, pajamas, rompers and one-piece garments; Children's and infants' cloth bibs; Children's headwear; Clothing for babies, toddlers and children, treated with fire and heat retardants, namely, pajamas, jackets, shirts, pants, jumpers; Coats; Dance costumes; Dresses; Ear muffs; Fleece bottoms; Fleece pullovers; Fleece shorts; Fleece tops; Fleece vests; Flip flops; Footwear; Halloween costumes and masks sold in connection therewith; Headbands; Headgear, namely, hats, caps, visors and bandanas; Headwear; Hooded pullovers; Hooded sweatshirts; Infant and toddler one piece clothing; Infant wearable blankets; Jackets and socks; Japanese footwear of rice straw (waraji); Japanese split-toed work footwear (jikatabi); Jeans; Jerseys; Jogging pants; Jogging suits; Jumper dresses; Knit shirts; Leg warmers; Long johns; Long underwear; Long-sleeved shirts; Mittens; Nightgowns; Nightshirts; Pajama bottoms; Pajamas; Panties, shorts and briefs; Rain boots; Rain coats; Rain hats; Rain jackets; Rain wear; Running suits;

Sandals; Shirts; Shirts for infants, babies, toddlers and children; Shoe accessories, namely, fitted decorative covers for shoes; Ski boot bags; Sleepwear; Slipper socks; Slippers; Sneakers; Socks; Sundresses; Surf wear; Sweat bands; Sweatbands; Sweaters; Sweatpants; Sweatshirts; Swim wear; T-shirts; Tee shirts. Thermal underwear; Undergarments; Underwear; Vests; Wraps; Wristbands; Yoga pants; Yoga shirts, in International Class 25.

2. The opposed Application was filed on October 1, 2012 under Section 1(b) of the Trademark Act.

3. Opposer is the owner of U.S. Trademark Registration Nos. 4,467,559 for the mark GENIE for Bras; Briefs; Camisoles; Chemises; Hosiery; Ladies' underwear; Leotards; Lingerie; Negligees; Nightgowns; Pajamas; Panties; Peignoirs; Robes; Shapewear, namely, shorts, control briefs, control camisoles and control slips; Shorts; Sleepwear; Slips; Stockings; Teddies; and Tights; 4,032,799 for the mark GENIE BRA and 4,170,355 for the mark GENIE BRA WHAT ALL WOMEN WISH FOR, all in International Class 25. Said registrations are valid and subsisting. A current printout of information from the electronic database records of the USPTO showing the current status and title of the registrations accompany this Notice of Opposition.

4. Opposer is also the owner of U.S. Trademark Application Serial No. 85/306249 for the mark GENIE SPORT for leggings, sports bras, sports pants,

stretch pants, sweat pants, sweat shirts and tops; Serial No. 85/306,200 for the mark GENIEJEANS for jeans, leggings, pants, stretch pants, sweat pants and tops; Serial No. 85/306,226 for the mark GENIEPLUS for bras, foundation garments, leggings, sleepwear, sports bras, tops and undergarments; Serial No. 85/306,249 for the mark GENIESPORT; and Serial No. 85/272,359 for the mark GENIE WEAR for foundation garments, lingerie and women's underwear in international class 025. Said applications all received Notices of Allowance.

5. Since at least 2011 or earlier, and prior to Applicant's filing date, Opposer has used GENIE and other GENIE-type marks listed above in connection with clothing in international class 25.
6. Opposer has been offering for sale goods bearing the GENIE marks under the domain name GENIEBRA.COM - which was created on December 29, 2010.
7. Opposer's goods in connection with its trademarks for GENIE and other GENIE-type marks listed above ("GENIE-type marks") are highly related to the clothing goods identified in Application Serial No. 85/742,504 for the mark LOOGIE THE BOOGER GENIE. On information and belief, Opposer's goods and Applicant's goods are offered to the same classes of customers through the same channels of trade.
8. Applicant's Mark, LOOGIE THE BOOGER GENIE, is confusingly similar to Opposer's GENIE and related GENIE-type marks, and is likely to cause

confusion.

9. If Applicant uses the mark LOOGIE THE BOOGER GENIE with the clothing goods identified in Application Serial No. 85/742,504, such use would be likely to cause confusion, mistake, and/or deception of the relevant trade and public. Customers and potential customers are likely to believe that Applicant's goods offered under the Mark emanate from, or are licensed or approved by, Opposer, when that is not the case. Such confusion, mistake, and/or deception would be a source of damage to Opposer.

10. If Applicant is granted the registration herein opposed, it would thereby obtain a prima facie right to use the mark LOOGIE THE BOOGER GENIE which is confusingly similar to the Opposer's marks, which would be a further source of damage to Opposer.

11. Applicant's mark, LOOGIE THE BOOGER GENIE, is likely to cause confusion with Opposer's trademark GENIE and related GENIE-type marks, and therefore Applicant's Mark should be refused registration, rendered unenforceable, and/or restricted under Section 2(d) of the Trademark Act.

WHEREFORE, Opposer believes that it will be damaged by registration of said Mark, LOOGIE THE BOOGER GENIE, and prays that this Opposition be sustained in favor of Opposer, that Application Serial No. 85/742,504 be refused registration, rendered unenforceable, and/or restricted based upon at the least the grounds set forth above.

The Applicant reserves the right to add additional counts beyond those recited above.

Opposer hereby appoints Barlow, Josephs & Holmes Ltd., a law firm composed of Daniel J. Holmander, Stephen J. Holmes, Cheryl A. Clarkin, David R. Josephs, Robert Lichter, and Joshua A. Stockwell, to act as attorneys for Opposer herein, with full power to prosecute said Opposition, to transact all relevant business with the Patent and Trademark Office and in the United States Courts and to receive all official communications in connection with this Opposition.

Respectfully submitted,

Tristar Products, Inc. (Opposer)

/cheryl a. clarkin/

Cheryl A. Clarkin, Esq.

Daniel J. Holmander, Esq.

Counsel for Opposer

Barlow, Josephs & Holmes Ltd.

101 Dyer Street, 5th floor

Providence, RI 02903-3908

Tel. 401-273-4446

Fax 401-273-4447

Email: cac@barjos.com

Dated: July 31, 2014

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **NOTICE OF OPPOSITION** has been served on Applicant's counsel and Applicant, at the following addresses of record, by first class mail, postage prepaid, this 21st day of July 2014:

Applicant
N.E. Castle
4 Richard Avenue
Shrewsbury, MA 01545

Applicant's Counsel
Michelle L. Grenier, Esq.
Grenier Law Offices PC
13 Fox Run Road
Falmouth, ME 04105-2467

/cheryl a. clarkin/

Cheryl A. Clarkin, Esq.
Counsel for Opposer



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GENIE

Word Mark	GENIE
Goods and Services	IC 025. US 022 039. G & S: Bras; Briefs; Camisoles; Chemises; Hosiery; Ladies' underwear; Leotards; Lingerie; Negligees; Nightgowns; Pajamas; Panties; Peignoirs; Robes; Shapewear, namely, shorts, control briefs, control camisoles and control slips; Shorts; Sleepwear; Slips; Stockings; Teddies; Tights. FIRST USE: 20110215. FIRST USE IN COMMERCE: 20110215
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	85751771
Filing Date	October 11, 2012
Current Basis	1A
Original Filing Basis	1B
Published for Opposition	February 5, 2013
Registration Number	4467559
Registration Date	January 14, 2014
Owner	(REGISTRANT) Tristar Products, Inc. CORPORATION PENNSYLVANIA 492 Route 46 East Fairfield NEW JERSEY 07004
Attorney of Record	Daniel J. Holmänder
Prior	4032799;4170355

Registrations

Type of Mark TRADEMARK
Register PRINCIPAL
**Live/Dead
Indicator** LIVE

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GENIE BRA

Word Mark	GENIE BRA
Goods and Services	IC 025. US 022 039. G & S: Bras. FIRST USE: 20110215. FIRST USE IN COMMERCE: 20110215
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	85209455
Filing Date	January 3, 2011
Current Basis	1A
Original Filing Basis	1B
Published for Opposition	May 24, 2011
Registration Number	4032799
Registration Date	September 27, 2011
Owner	(REGISTRANT) Tristar Products, Inc. CORPORATION PENNSYLVANIA 492 Route 46 East Fairfield NEW JERSEY 07004
Attorney of Record	Daniel J. Holmander
Disclaimer	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "BRA" APART FROM THE MARK AS SHOWN
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

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genie bra
what all women wish for

Word Mark	GENIE BRA WHAT ALL WOMEN WISH FOR
Goods and Services	IC 025. US 022 039. G & S: Bras. FIRST USE: 20110215. FIRST USE IN COMMERCE: 20110215
Mark Drawing Code	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code	29.01.07 - Inconspicuous designs functioning as punctuation or parts of letters; Small, inconspicuous design elements functioning as punctuation or parts of letters
Serial Number	85332168
Filing Date	May 27, 2011
Current Basis	1A
Original Filing Basis	1A
Published for Opposition	April 24, 2012
Registration Number	4170355
Registration Date	July 10, 2012
Owner	(REGISTRANT) Tristar Products, Inc. CORPORATION PENNSYLVANIA 492 Route 46 East Fairfield NEW JERSEY 07004
Attorney of Record	Daniel J. Holmander
Disclaimer	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "BRA" APART FROM THE MARK AS SHOWN
Description of Mark	Color is not claimed as a feature of the mark. The mark consists of the words "GENIE BRA" in script lettering with a heart design over the "I" in "GENIE" above the words "WHAT ALL WOMEN WISH FOR".

Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead
Indicator LIVE

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GENIE SPORT

Word Mark GENIE SPORT

Goods and Services IC 025. US 022 039. G & S: Leggings; Sports bras; Sports pants; Stretch pants; Sweat pants; Sweat shirts; Tops. FIRST USE: 20130820. FIRST USE IN COMMERCE: 20130825

Standard Characters Claimed

Mark Drawing Code (4) STANDARD CHARACTER MARK

Serial Number 85306249

Filing Date April 27, 2011

Current Basis 1A

Original Filing Basis 1B

Published for Opposition March 20, 2012

Registration Number 4572700

Registration Date July 22, 2014

Owner (REGISTRANT) Tristar Products, Inc. CORPORATION PENNSYLVANIA 492 Route 46 East Fairfield NEW JERSEY 07004

Attorney of Record Daniel J. Holmander

Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "SPORT" APART FROM THE MARK AS SHOWN

Type of Mark TRADEMARK

Register PRINCIPAL

Live/Dead Indicator LIVE

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GenieJeans

Word Mark	GENIEJEANS
Goods and Services	IC 025. US 022 039. G & S: Jeans; Leggings; Pants; Stretch pants; Sweat pants; Tops
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	85306200
Filing Date	April 27, 2011
Current Basis	1B
Original Filing Basis	1B
Published for Opposition	March 20, 2012
Owner	(APPLICANT) Tristar Products, Inc. CORPORATION PENNSYLVANIA 492 Route 46 East Fairfield NEW JERSEY 07004
Attorney of Record	Daniel J. Holmander
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

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GeniePlus

Word Mark	GENIEPLUS
Goods and Services	IC 025. US 022 039. G & S: Bras; Foundation garments; Leggings; Sleepwear; Sports bras; Tops; Under garments
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	85306226
Filing Date	April 27, 2011
Current Basis	1B
Original Filing Basis	1B
Published for Opposition	March 20, 2012
Owner	(APPLICANT) Tristar Products, Inc. CORPORATION PENNSYLVANIA 492 Route 46 East Fairfield NEW JERSEY 07004
Attorney of Record	Daniel J. Holmander
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

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GENIE SPORT

Word Mark GENIE SPORT

Goods and Services IC 025. US 022 039. G & S: Leggings; Sports bras; Sports pants; Stretch pants; Sweat pants; Sweat shirts; Tops. FIRST USE: 20130820. FIRST USE IN COMMERCE: 20130825

Standard Characters Claimed

Mark Drawing Code (4) STANDARD CHARACTER MARK

Serial Number 85306249

Filing Date April 27, 2011

Current Basis 1A

Original Filing Basis 1B

Published for Opposition March 20, 2012

Registration Number 4572700

Registration Date July 22, 2014

Owner (REGISTRANT) Tristar Products, Inc. CORPORATION PENNSYLVANIA 492 Route 46 East Fairfield NEW JERSEY 07004

Attorney of Record Daniel J. Holmander

Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "SPORT" APART FROM THE MARK AS SHOWN

Type of Mark TRADEMARK

Register PRINCIPAL

Live/Dead Indicator LIVE

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GENIE WEAR

Word Mark	GENIE WEAR
Goods and Services	IC 025. US 022 039. G & S: Foundation garments; Lingerie; Women's underwear
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	85272359
Filing Date	March 21, 2011
Current Basis	1B
Original Filing Basis	1B
Published for Opposition	May 1, 2012
Owner	(APPLICANT) Tristar Products, Inc. CORPORATION PENNSYLVANIA 492 Route 46 East Fairfield NEW JERSEY 07004
Attorney of Record	Daniel J. Holmander
Disclaimer	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "WEAR" APART FROM THE MARK AS SHOWN
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

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